IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

MFA.No. 831 of 2002(B)

OPMV.1766/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THALASSERY
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APPELLANT: PETITIONER:

MITHUN RAMADAS, S/O. RAMADASAN,
AGED 20 YEARS, RESIDING AT SREERAM,
(P.O) KUTHUPARAMBA.

BY ADV. SRI.SARVOTHAMAN

RESPONDENTS: RESPONDENTS:
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1. KAVILEVALAPPIL AJESH, S/O. NARAYANAN,
AGED 22 YEARS, NEAR KOLMOTTA, PARASSINIKKADAVU.

2. PATTERI SASINDRAN, S/O. GOVINDAN,
KALLIASSERI AMSOM DESOM, (P.O) KALLIASSERI,
KANNUR DISTRICT.

3. UNITED INDIA INSURANCE CO. LTD.,
THALSSERY ROAD, KANNUR.

BY ADV. SRI.MATHEWS JACOB (SR.) R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 3.10.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 831 OF 2002

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Dated this the 3rd day of October, 2007

J U D G M E N T

Petitioner in O.P(MV) No.1766 of 1996 on the file of the Motor Accidents Claims Tribunal, Thalassery is the appellant. Petitioner filed the O.P. with the following averments. On 13.7.1996 petitioner was travelling in a stage carriage bus bearing Reg. No.KL-13/B-7697 from Cherkala to Kannur. When the bus reached near Valiyancode Siva Temple it rammed into the rear side of a stationary bus bearing Reg. No.KA-20/A-1. The accident occurred solely due to the negligence of the driver of the bus in which the petitioner was travelling. He sustained injuries including fracture.

2. Owner and driver of the bus did not contest. Insurer alone contested the matter. It was contended that the petition is not maintainable and the accident occurred not due to the negligence of the driver of the bus in which the petitioner was travelling. It was contended that it was a collision of two vehicles and petition is bad for non-joinder of necessary parties. It was further contended that the

compensation claimed was exorbitant.

3. Tribunal observed that Exhibit A1 FIR produced by the petitioner was not an authenticated copy. It was further held that the scene of occurrence could not be located from the scene mahazar. It was found that the petitioner did not adduce any evidence. Tribunal further found that the petition is bad for non-joinder of necessary parties and dismissed the petition.

4. The specific case put forward by the petitioner was that the vehicle in which he was travelling rammed into the rear side of a stationary bus causing the accident. It was also his case that the accident occurred solely due to the negligence of the driver of the bus in which he was travelling and not on account of the negligence of the driver of the other bus. The Tribunal ought to have afforded an opportunity to the petitioner to implead the driver, owner and Insurer of the other bus, if the same is a statutory requirement. It is submitted by the counsel for the petitioner that other persons who were travelling in the bus in which the petitioner was travelling also sustained injuries and they also filed Original Petitions claiming compensation and in those

cases the Tribunal had found that the accident had occurred due to the negligence of the first respondent in this case and as such the question of impleadment of owner, driver and Insurer of the other vehicle does not arise in this case.

5. Considering all aspects of the matter, I am of the view that it is only just and proper that the appellant be given an opportunity to establish his case. For that purpose, the case has to go back.

6. In the result, the appeal is allowed. The award passed by the Tribunal dismissing the Original Petition is hereby set aside. The case is remanded. The Tribunal is directed to take O.P(MV) No.1766 of 1996 back to file and dispose of the same afresh in accordance with law after affording the parties an opportunity to amend the pleadings and implead necessary parties. They shall also be given an opportunity to adduce evidence, if so advised.

Parties are directed to appear before the Motor Accidents Claims Tribunal, Thalassery on 12.11.2007.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 831 OF 2002

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J U D G M E N T

3RD OCTOBER, 2007